

Jun 19, 2017

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BILLY EDWARD TOYCEN,

Plaintiff,

v.

CITY OF YAKIMA MUNICIPAL
COURT, YAKIMA POLICE
DEPARTMENT, UNITED STATES
OF AMERICA, YAKIMA COUNTY
and WASHINGTON STATE,

Defendants.

NO: 1:16-CV-03189-SMJ

**ORDER DISMISSING
COMPLAINT**

1915(g)

By Order filed March 6, 2017, the Court advised Plaintiff of the deficiencies of his complaint and directed him to amend or voluntarily dismiss within sixty (60) days. ECF No. 8. Plaintiff, a prisoner at the Yakima County Jail, is proceeding *pro se* and *in forma pauperis*; Defendants have not been served in this action.

Although granted the opportunity to do so, Plaintiff has not amended his complaint to state a claim upon which relief may be granted. The State of Washington is not a person amenable to suit under section 1983. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989) (holding that a State is not

1 a “person” under section 1983). A municipal court, as an arm of the state, is
2 immune from a section 1983 suit for monetary damages. *Franceschi v. Schwartz*,
3 57 F.3d 828, 831 (9th Cir. 1995).

4 Plaintiff named Yakima County as a Defendant but failed to allege that his
5 constitutional rights were violated pursuant to an official governmental policy or
6 custom. *Monell v. N.Y.C. Dep’t of Soc. Servs.*, 436 U.S. 658, 690–94 (1978). He
7 improperly named the Yakima Police Department as a defendant. *See United*
8 *States v. Kama*, 394 F.3d 1236, 1239–40 (9th Cir. 2005) (Ferguson, J., concurring)
9 (municipal police departments and bureaus are generally not considered “persons”
10 within the meaning of section 1983).

11 Plaintiff’s allegations against the United State of America were unclear.
12 Regardless, there is generally no liability under § 1983 for federal actors. *See*
13 *Morse v. North Coast Opportunities, Inc.*, 118 F.3d 1338, 1343 (9th Cir. 1997)
14 (finding a complaint “invalid on its face in its reliance upon § 1983 as a cause of
15 action against federal government actors”).


16 For the reasons set forth above and in the Court’s prior order, **IT IS**
17 **ORDERED** the complaint is **DISMISSED with prejudice** pursuant to 28 U.S.C.
18 §§ 1915A(b)(1),(2) and 1915(e)(2).

19 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who
20 brings three or more civil actions or appeals which are dismissed as frivolous or for

1 failure to state a claim will be precluded from bringing any other civil action or
2 appeal *in forma pauperis* “unless the prisoner is under imminent danger of serious
3 physical injury.” 28 U.S.C. § 1915(g). **Plaintiff is advised to read the statutory**
4 **provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff’s complaint may**
5 **count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and may**
6 **adversely affect his ability to file future claims.**

7 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
8 Order, enter Judgment, forward copies to Plaintiff at his last known address, and
9 **CLOSE** the file. The District Court Executive is further directed to forward a copy
10 of this Order to the Office of the Attorney General of Washington, Corrections
11 Division. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of
12 this Order would not be taken in good faith and would lack any arguable basis in
13 law or fact.

14 **DATED** this 19th day of June 2017.

15 
16 SALVADOR MENDEZ, JR.
17 United States District Judge
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